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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/506,361	02/18/2000	Marc Howard Spinoza	604-540	8242

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EXAMINER

WILLIAMS, CATHERINE SERKE

ART UNIT PAPER NUMBER

3763

DATE MAILED: 03/12/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/506,361

Applicant(s)

SPINOZA, MARC HOWARD

Examiner

Catherine S. Williams

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 February 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 13-20, 31-36 and 39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13-16, 18-20, 31, 34-36 and 39 is/are rejected.
- 7) ☒ Claim(s) 17, 32 and 33 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION*****Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2/17/04 has been entered.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 13-16, 18-20 and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Potter et al (US Pat# 4,867,154). Potter discloses an endotracheal tube stabilizing device that includes a tubular sleeve fastener (68) of variable length configured when lengthened to grip a tube (11) which has a lumen and is configured to transport fluid to or from a patient. See figure 1. While the sleeve (68) is helically formed around the tube (11), when looked at in its entirety the sleeve (68) takes on a tubular appearance because it has tubular dimensions (i.e. diameter and height). See figure 14. The sheath (68) is capable of gripping tube (11). See 7:15. While the specification does not disclose and the drawings do not show the sheath gripping the tube when lengthening, the lengthening of the sheath is considered inherent in order for the sheath to grip

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the tube. Clearly the sheath (68) grips the tube when the tube is moving away from the patient and pulls the sheath with it. See figure 14. The tube, by pulling away from the patient, lengthens the sheath and the sheath then grips the tube. As one can see in figure 14, when the sheath is shortened (see figure 14) the tube can freely slide along the length of the sheath. Loops (4,8,18) of harness (2) attach the sheath to the patient via pad (20).

Claims 13-14, 31 and 34-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Kite et al (US Pat# 4,754,685). Kite discloses an abrasion resistant braided (spiral weave) tubular sleeve for use as protective sleeving over hoses (tubing). See 1:16 and 4:54. The tube radially expands when axially compressed. See 1:33+. Once axially compressed the sleeve can be fitted (slide) over top hoses and other tubular structures. The tube then extends axially (lengthens) to radially compress (grips) over the hose. See 2:39. The braided structure of the sleeve has a foraminous wall (open weave). See figure 1. The braid is made from polyester fiber. See 2:43.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kite et al or Potter et al. Both patents independently meet the claim language as described above but both fail to include instructions for use.

At the time of the invention, it would have been obvious to incorporate instructions independently into both devices above. Instructions are well known not only in the art but in most products for sale or use in this country. Instructions are a valuable tool manufactures use to enable the end user to properly and safely use the device. The motivation for incorporating instructions into either device above would have been to enhance the safety of the user of the device.

#### *Allowable Subject Matter*

Claims 17 and 32-33 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### *Conclusion*

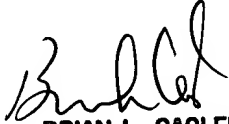
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catherine S. Williams whose telephone number is 703-308-4846. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 703-308-3552. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Catherine S. Williams *CSW*.  
March 6, 2004

  
**BRIAN L. CASLER**  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700